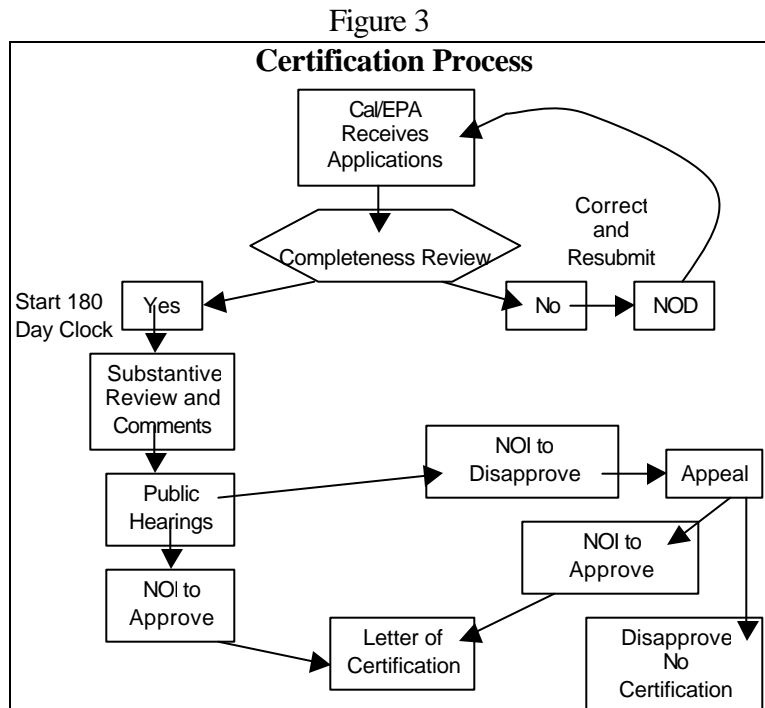


Article 4. Certification Process and Responsibilities

§15160. How will the certification process proceed once the Secretary receives an application?



(a) Completeness review.

(1) Each application shall be reviewed to determine whether all required information has been provided. Such review shall be finished within ninety (90) days of receipt of the application. Within the 90 day period:

- (A) The Secretary shall send a notice of completeness to an applicant agency whose application has been determined to contain all necessary components with a request for 4 additional copies of the application; or
- (B) The Secretary shall return an incomplete application to the applicant agency.

- (i) The Secretary shall notify an applicant agency of an incomplete application by using a Notice of Deficiency (NOD).
- (ii) In the NOD, the Secretary shall specify those provisions of the application which are not sufficient and the date by which the additional information is due.

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- (b) State agency review and recommendation.
 - (1) Applications which are found to be complete shall be reviewed pursuant to Health and Safety Code, Section 25404.3(b). In determining whether an applicant agency should be certified, the Secretary shall receive comments from the following or their designee:
 - ? Director of Department of Toxic Substances Control
 - ? Director of the Office of Emergency Services
 - ? State Fire Marshal
 - ? Executive Officer and Chairperson of the State Water Resources Control Board
 - ? Executive Officers and Chairpersons of the California Regional Water Quality Control Boards
 - (2) Comments and recommendations to the Secretary shall be based on analysis of the application contents and consideration of the requirements of this Division.
- (c) Public hearing.
 - (1) The Secretary shall hold a public hearing regarding the application for certification.
 - (2) The Secretary may group public hearings for efficiency purposes.
 - (3) The Secretary shall consider comments received as part of the public hearing in the determination of whether an applicant should be certified.
- (d) The Notice of Intent (NOI).
 - (1) The Secretary shall complete the review process and issue a Notice of Intent (NOI) within 180 days of receipt of four additional copies of the complete application for certification.
 - (A) The Secretary shall issue a Notice of Intent to disapprove the application for certification if the Secretary finds the applicant agency should not be certified. The NOI to disapprove shall identify those areas of the Unified Program which are deficient.
 - (B) The Secretary shall issue a Notice of Intent to approve if the Secretary intends to approve an application for certification.
 - (2) During periodic review of the Unified Program, or review of an amended application, if the Secretary finds the Unified Program or the Unified Program implementation to be deficient, the Secretary shall issue a Notice of Intent to withdraw certification. The NOI shall identify those areas of the Unified Program which are deficient.
- (e) Final Decision.
 - (1) The Secretary's final decision shall be issued in writing to the applicant agency within 30 days of issuing the NOI except as provided in section 15160(f). The certification shall include the date upon which the CUPA's authority shall commence.
 - (2) For purposes of this division and Division 4.5 of Title 22 of the California Code of Regulations, "certification" of a CUPA shall constitute "designation"

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pursuant to Health and Safety Code, Section 25180, of the responsible agency implementing Chapter 6.5 of the Health and Safety Code, pursuant to Section 66272.10, California Code of Regulations.

(f) Certification Decision Appeal Process.

- (1) Within 30 days of receipt of a NOI to disapprove certification, the applicant agency may respond to the reasons specified and correct the deficiencies in its application.
- (2) Within 30 days of receipt of a NOI to withdraw certification, the CUPA may respond to the reasons specified and correct the deficiencies in its Unified Program.
- (3) In addition to its rights pursuant to (1) above, the applicant agency may request a second public hearing, at which time the Secretary shall hear the applicant agency's response to the reasons specified in the NOI to disapprove.
- (4) The appeal process shall be completed within 60 days of receipt of the appeal.
- (5) The Secretary's final decision on the certification decision appeal shall be issued in writing.

Authority cited: Sections 25404 and 25404.6(c), Health and Safety Code. Reference: Sections 25404(d), 25404.3 and 25404.4(a), Health and Safety Code.

HISTORY

1. New article 4 and section filed 11-14-94 as an emergency; operative 11-14-94 (Register 94, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-20-95 or emergency language will be repealed by operation of law on the following day.
2. Editorial correction of History 1 (Register 95, No. 10).
3. New article 4 and section refiled 3-7-95 as an emergency; operative 3-7-95 (Register 95, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-5-95 or emergency language will be repealed by operation of law on the following day.
4. New article 4 and section refiled 7-7-95; operative 7-7-95 (Register 95, No. 27). A Certificate of Compliance must be transmitted to OAL by 11-4-95 or emergency language will be repealed by operation of law on the following day.
5. New article 4 and section refiled 11-3-95 as an emergency; operative 11-3-95 (Register 95, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-2-96 or emergency language will be repealed by operation of law on the following day.
6. Certificate of compliance as to 11-14-94 order including new Figure 3 designator, amendment of subsections (a)(1)(A), (b)(1) and (c)(1), new subsections (c)(2)-(c)(3) and amendment of subsections (d)(1), (e)(1)-(e)(2) and (f)(3) transmitted to OAL 12-15-95 and filed 1-31-96 (Register 96, No. 5).

§15170. What criteria will the Secretary use to evaluate applications?

- (a) Adequacy of technical expertise as required by Sections 15260 and 15270.
- (b) Adequacy of staff resources which the applicant agency shall demonstrate by submitting the following information to be analyzed:
 - (1) the number and type of regulated businesses within the jurisdiction;
 - (2) an estimate of the annual number of compliance and complaint inspections;
 - (3) the time allocation requirements of local agency staff shall be computed on a full time equivalent basis, not to exceed 1776 work hours per year per person, for the following:

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- (A) inspections and the related travel, research, analysis of findings, and documentation;
 - (B) inspection and enforcement activities including warnings, notices, meetings, hearings, legal proceedings, and documentation;
 - (C) permit activities including application reviews, modifications and revisions, and facility evaluations;
 - (D) training including field, meetings, seminars, workshops, courses and literature reviews; and
 - (E) management including day to day operation scheduling and supervision.
- (4) an estimate of required staff and supervisory personnel to manage the single fee system, surcharge system and fee accountability system.
 - (5) the number of support staff, both technical and non-technical, for all program elements.
 - (6) description of contacts, working relationship with local prosecution and law enforcement agencies (i.e., District Attorneys, strike force memberships, etc.)
- (c) Adequacy of budget resources and funding mechanisms. The applicant agency shall include as part of the application, a summary of projected annual funding and expenses for the entire local Unified Program. Adequacy of budget resources and funding mechanisms shall be calculated as the ratio of funding to expenses, a value of one (1) being the standard for most adequate.
- (d) Adequacy of training requirements as required by Sections 15260 and 15270.
- (e) Past performance. The Secretary, shall evaluate the past performance of the applicant agency and its proposed participating agencies in implementing hazardous materials and hazardous waste management programs.
- (f) Recordkeeping and cost accounting systems proposed for the Unified Program, including:
- (1) Elements required by the Secretary pursuant to Health and Safety Code Section 25206;
 - (2) A method for calculating program costs;
 - (3) Permit fee structure;
 - (4) Fee collection process;
 - (5) Data management.
- (g) Compliance with the criteria in Section 66272.10 of Title 22 of the California Code of Regulations, except for the requirement of paragraph (2) of subdivision (b) of that section related to county-wide jurisdiction and paragraph (3) of subdivision (b) of that section related to temporary household hazardous waste collection facilities.
- (h) Additional programs, including but not limited to programs such as hazardous waste source reduction and pollution prevention programs, incorporated in the Unified Program.

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- (i) Identified adverse impacts on the county. The Secretary will give particular consideration to written comments or comments received during the public hearing.
- (j) Less fragmentation within the county. The Secretary shall not certify an agency unless there is a finding that the administration of the Unified Program throughout the entire county in which the applicant agency is located will be less fragmented between jurisdictions, as compared to before January 1, 1994, with regard to the administration of the provisions specified in Health and Safety Code 25404(c). The Secretary shall consider, but shall not be limited to, the following measures of fragmentation. The applicant agency shall justify its certification with respect to these measures in the implementation plan required pursuant to Section 15150(e)(6).
 - (1) The number of agencies managing the six Unified Program elements listed in Health and Safety Code, Section 25404(c) within the county prior to January 1, 1994 and the number of agencies managing those program elements as proposed by the applicant agency.
 - (2) The number of agencies a regulated business had to work with for the Unified Program elements prior to January 1, 1994 and the number of agencies a regulated business will have to work with as proposed by the applicant agency.
- (k) County-wide coordination and consistency. The Secretary shall not certify an agency unless there is a finding of county-wide coordination and consistency. In the finding, the Secretary shall consider, but not be limited to the following:
 - (1) Agreements among the county, city, and local agency applicants indicating consistency with a county-wide Unified Program.
 - (2) A list of cities within the county that have been informed and do not intend to apply to be a CUPA.
- (l) Evidence that an applicant agency which proposes in its Unified Program implementation plan to allow other agencies to implement program elements has met the requirements of Health and Safety Code Section 25404.3(d). The Secretary shall not certify an applicant agency which proposes to include participating agencies in the Unified Program, unless there is a finding that:
 - (1) The applicant agency has adequate authority and had adequately designed the Unified Program to ensure coordination and consistency between program elements;
 - (2) The proposed participating agencies have met the education, training and experience requirements identified in Section 15260 and 15270, and have adequate resources to implement the program element(s) which the applicant agency has proposed it will take on; and
 - (3) All necessary agreements are in place, pursuant to Health and Safety Code, Section 25404.3(d)(3) and (d)(4).
- (m) The requirements of Sections 15160(b) and 15160(c).
- (n) The Secretary shall also consider the following:

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- (1) The implementation plan for the consolidation of permits, consolidation of inspections and enforcement, and consolidation of fees.
- (2) Documentation of authority to implement program elements, such as the required ordinances and resolutions passed by a local government to implement the underground tank program and the business plan program.
- (3) If the program will be fully operational no later than one year after certification.
- (4) If certification will result in overlapping agency authority within the jurisdiction, the Secretary shall consider the discussion required pursuant to Section 15150(c)(1).

Authority cited: Sections 25404(b), 25404.2(c), 25404.3(b) and 25404.6(c), Health and Safety Code. Reference: Sections 25404.2(a) and (c), and 25404.3(b), (c) and (d), Health and Safety Code.

HISTORY

1. New section filed 11-14-94 as an emergency; operative 11-14-94 (Register 94, No. 46). A Certificate of Compliance must be transmitted to OAL by 3-20-95 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-7-95 as an emergency; operative 3-7-95 (Register 95, No. 10). A Certificate of Compliance must be transmitted to OAL by 7-5-95 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 7-7-95; operative 7-7-95 (Register 95, No. 27). A Certificate of Compliance must be transmitted to OAL by 11-4-95 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 11-3-95 as an emergency; operative 11-3-95 (Register 95, No. 44). A Certificate of Compliance must be transmitted to OAL by 3-2-96 or emergency language will be repealed by operation of law on the following day.
5. Certificate of compliance as to 11-14-94 order including amendment of subsections (b), (b)(2), (c), (g), (h), (j)(1), (k)-(k)(2) and (l)(1)-(l)(3), new subsection (m) and subsection relettering, amendment of newly designated subsection (n)(2) and repealer of newly designated subsection (n)(4) and subsection renumbering transmitted to OAL 12-15-95 and filed 1-31-96 (Register 96, No. 5).